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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 KEITH RUSSELL JUDD,
12 BOP #11593-051,

13 Plaintiff,

14 vs.
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16 SECRETARY OF STATE OF
17 CALIFORNIA; STATE OF
18 CALIFORNIA,

19 Defendants.
20

Civil No. 11-1287 H (RBB)

ORDER:

**(1) DENYING MOTION TO
PROCEED *IN FORMA PAUPERIS*
AS BARRED BY 28 U.S.C. § 1915(g)
[ECF No. 2]**

AND

**(2) DISMISSING CASE AS
FRIVOLOUS AND FOR FAILURE
TO PAY FILING FEE REQUIRED
BY 28 U.S.C. § 1914(a)**

21 Plaintiff, a federal prisoner currently incarcerated at the Federal Correctional Institution
22 in Texarkana, Texas and proceeding pro se, has filed a civil complaint seeking injunctive relief
23 requiring the State of California to “place his name on the 2012 Presidential Primary Election
24 Ballot, or equivalent, as a Democratic candidate for President of the United States,” to “enter a
25 judgment declaring convicted felons’ right to vote in all federal elections,” and to “declare all
26 state laws in conflict unconstitutional.” (Compl. at 2.) Plaintiff has not prepaid the civil filing
27 fee required by 28 U.S.C. § 1914(a); instead, he has submitted a Motion to Proceed *In Forma*
28 *Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a) [ECF No. 2].

I. Motion to Proceed IFP

Section 1915 of Title 28 of the United States Code allows certain litigants to pursue civil litigation IFP, that is, without the full prepayment of fees or costs. 28 U.S.C. § 1915(a)(2). However, the Prison Litigation Reform Act (“PLRA”) amended section 1915 to preclude the privilege to proceed IFP:

. . . if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief can be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g). “This subdivision is commonly known as the ‘three strikes’ provision.” *Andrews v. King*, 398 F.3d 1113, 1116 n.1 (9th Cir. 2005) (hereafter “*Andrews*”). “Pursuant to § 1915(g), a prisoner with three strikes or more cannot proceed IFP.” *Id.*; see also *Andrews v. Cervantes*, 493 F.3d 1047, 1052 (9th Cir. 2007) (hereafter “*Cervantes*”) (under the PLRA, “[p]risoners who have repeatedly brought unsuccessful suits may entirely be barred from IFP status under the three strikes rule[.]”). The objective of the PLRA is to further “the congressional goal of reducing frivolous prisoner litigation in federal court.” *Tierney v. Kupers*, 128 F.3d 1310, 1312 (9th Cir. 1997).

“Strikes are prior cases or appeals, brought while the plaintiff was a prisoner, which were dismissed on the ground that they were frivolous, malicious, or failed to state a claim,” *Andrews*, 398 F.3d at 1116 n.1 (internal quotations omitted), “even if the district court styles such dismissal as a denial of the prisoner’s application to file the action without prepayment of the full filing fee.” *O’Neal v. Price*, 531 F.3d 1146, 1153 (9th Cir. 2008). Once a prisoner has accumulated three strikes, he is prohibited by section 1915(g) from pursuing any other IFP action in federal court unless he can show he is facing “imminent danger of serious physical injury.” See 28 U.S.C. § 1915(g); *Cervantes*, 493 F.3d at 1051-52 (noting § 1915(g)’s exception for IFP complaints which “make[] a plausible allegation that the prisoner faced ‘imminent danger of serious physical injury’ at the time of filing.”).

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II. Application of 28 U.S.C. § 1915(g)

As an initial matter, the Court has carefully reviewed Plaintiff's Complaint and has ascertained that there is no "plausible allegation" to suggest Plaintiff "faced 'imminent danger of serious physical injury' at the time of filing." *Cervantes*, 493 F.3d at 1055 (quoting 28 U.S.C. § 1915(g)).

A court "may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue." *Bias v. Moynihan*, 508 F.3d 1212, 1225 (9th Cir. 2007) (quoting *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 803 n.2 (9th Cir. 2002)); see also *United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992). Since 1994, Plaintiff has filed an astonishing 296 civil actions and an additional 586 appeals and extraordinary writs in practically every federal district and appellate court in the country. See PACER (Public Access to Court Electronic Records) Case Locator, <https://pacer.uscourts.gov> (last visited July 13, 2011). Plaintiff has filed an additional 12 petitions for writ of certiorari and mandamus in the United States Supreme Court. See *Judd v. United States District Court for the Western District of Texas*, 528 U.S. 5, 5 (1999). As a result of his frivolous filings and repeated abuse of the judicial system, Plaintiff has been sanctioned and precluded from filing any further civil actions or appeals without full prepayment of filing fees and prior leave of Court in the Supreme Court as well as in the Third, Fifth, Tenth and District of Columbia Circuit Courts of Appeal. *Id.*; see also *In re Keith Russell Judd*, 240 Fed. Appx. 981, 2007 WL 2080459 (3d Cir. 2007); *United States v. Judd*, 67 Fed. Appx. 248, 2003 WL 21145742 (5th Cir. 2003); *Judd v. University of New Mexico*, 204 Fed. Appx. 1041, 1044-45 (10th Cir. 2000); *Judd v. United States*, 2006 WL 1565084 (D.C. Cir. 2006).

Thus, it is beyond dispute that Plaintiff has far exceeded the three 'strikes' permitted him to continue to proceed IFP. A random sample of civil actions and appeals filed by Plaintiff while incarcerated and dismissed on the grounds that they were frivolous, malicious, or failed to state a claim upon which relief may be granted include: *Judd v. Univ. of New Mexico*, 1997 WL 811623 (5th Cir. Dec. 9, 1997) (order dismissing appeal as frivolous); *Judd v. United States*

1 *District Court*, 1999 WL 274608 (5th Cir. April 16, 1999) (order dismissing appeal as
 2 frivolous); *Judd v. United States District Court*, 1999 WL 274610 (5th Cir. April 16, 1999)
 3 (order dismissing appeal as frivolous); *Judd v. United States*, Civil Case No. 1:06-cv-14257
 4 (S.D. N.Y. Dec. 8, 2006) (order dismissing case as frivolous); *Judd v. Furgeson*, 239 F. Supp.
 5 2d 442, 443 (D. N.J. 2002) (listing multitude of federal cases filed by Plaintiff and dismissed
 6 as frivolous); and *Judd v. United States*, Civil Case No. 7:00cv188 (W.D. Va. March 9, 2000)
 7 (order dismissing case as frivolous).

8 Despite this history, Plaintiff has over the course of the last two months alone, filed an
 9 additional sixty (60) civil complaints identical to the one he filed in this Court, save for the
 10 substitution of different States and Secretaries of State named as Defendants, and all
 11 challenging the State's refusal to place his name on the Presidential election ballot. Twenty-
 12 three of these have also been dismissed as duplicative, frivolous, abusive and as barred by 28
 13 U.S.C. § 1915(g).¹ For this additional reason, and regardless of Plaintiff's IFP status, this action
 14 must too be dismissed as frivolous. *See* 28 U.S.C. § 1915A(b); *Cato v. United States*, 70 F.3d

17 ¹ They are: *Judd v. State of Hawaii*, Civil Case No. 1:11-cv-0365-DAE-BMK (D. Hawaii June
 18 13, 2011 Order); *Judd v. State of Missouri*, Civil Case No. 2:11-cv-4146-ODS (W.D. Mo. June 6, 2011
 19 Order); *Judd v. Wyoming Sec'y of State*, Civil Case No. 2:11-cv-0202-CAB (D. Wyo. June 6, 2011
 20 Order); *Judd v. Sec'y of the Commonwealth of Massachusetts*, Civil Case No. 4:11-mc-94007-FDS (D.
 21 Mass. June 3, 2011 Order); *Judd v. Sec'y of State of Alabama*, Civil Case No. 2:11-cv-01753-KOB-TMP
 22 (N.D. Ala. June 6, 2011 Order); *Judd v. Sec'y of State of Iowa*, Civil Case No. 5:11-cv-04050-MWB
 23 (N.D. Iowa July 7, 2011 Order); *Judd v. State Board of Elections of Maryland*, Civil Case No. 11-cv-
 24 01447-RDB (D. Maryland June 10, 2011 Order); *Judd v. Sec'y of State of Colorado*, Civil Case No.
 25 1:11-cv-01399-LTB (D. Colo. July 7, 2011 Order); *Judd v. Oklahoma State Election Board*, Civil Case
 26 No. 4:11-cv-00331-GKF-PJC (N.D. Okla. May 31, 2011 Order); *Judd v. Dep't of State of Tennessee*,
 27 Civil Case No. 3:11-cv-00244-TWP-HBG (E.D. Tenn. June 3, 2011 Order); *Judd v. Sec'y of State of*
 28 *Montana*, Civil Case No. 9:11-cv-00080-DWM-JCL (D. Mont. May 27, 2011 Recommendation and
 Order); *Judd v. Pennsylvania Dep't of State*, Civil Case No. 2:11-cv-03849-CMR (E.D. Pa. June 24,
 2011 Order); *Judd v. Sec'y of State of Florida*, Civil Case No. 4:11-cv-00234-SPM-WCS (N.D. Fla. July
 12, 2011 Order); *Judd v. State of Georgia Sec'y of State*, Civil Case No. 5:11-cv-00233-CAR-CHW
 (M.D. Ga. June 16, 2011 Order); *Judd v. Sec'y of State of Kentucky*, Civil Case No. 3:11-cv-00027-DCR
 (E.D. Ky. June 20, 2011 Memorandum Order); *Judd v. Sec'y of State of Maine*, Civil Case No. 1:11-cv-
 00212-DBH (D. Maine June 30, 2011 Order); *Judd v. Oklahoma State Election Bd.*, Civil Case No.
 6:11-cv-00183-RAW (E.D. Okla. June 13, 2011 Order); *Judd v. State of Iowa*, Civil Case No. 4:11-cv-
 00253-JAJ (S.D. Iowa May 31, 2011 Order); *Judd v. Arkansas Sec'y of State*, Civil Case No. 4:11-cv-
 00447-BRW (E.D. Ark. June 9, 2011 Order); *Judd v. Louisiana State Sec'y*, Civil Case No. 2:11-cv-
 01501-KDE-JCW (E.D. La. July 5, 2011 Order); *Judd v. State Bd. of Elections of Virginia*, Civil Case
 No. 7:11-cv-00258-JCT (W.D. Va. June 9, 2011 Order); and *Judd v. State bd. of Elections of Virginia*,
 Civil Case No. 1:11-cv-00618-JCC-TCB (E.D. Va. June 20, 2011 Order).

1103, 1105 n.2 (9th Cir. 1995) (finding prisoner's complaint frivolous if it "merely repeats pending or previously litigated claims.").

Accordingly, because Plaintiff has, while incarcerated, accumulated many more than three "strikes" pursuant to § 1915(g), and he fails to make a "plausible allegation" that he faced imminent danger of serious physical injury at the time he filed his Complaint, he is not entitled to the privilege of proceeding IFP in this action. *See Cervantes*, 493 F.3d at 1055; *Rodriguez*, 169 F.3d at 1180 (finding that 28 U.S.C. § 1915(g) "does not prevent all prisoners from accessing the courts; it only precludes prisoners with a history of abusing the legal system from continuing to abuse it while enjoying IFP status"); *see also Franklin v. Murphy*, 745 F.2d 1221, 1231 (9th Cir. 1984) ("[C]ourt permission to proceed IFP is itself a matter of privilege and not right.").

III. Conclusion and Order


For the reasons set forth above, the Court hereby:

- 1) **DENIES** Plaintiff's Motion to Proceed IFP [ECF No. 2] as barred by 28 U.S.C. § 1915(g);
- 2) **DISMISSES** this action as frivolous pursuant to 28 U.S.C. § 1915A(b) and for failure to pay the \$350 civil filing fee required by 28 U.S.C. § 1914(a), and
- 3) **CERTIFIES** that an IFP appeal from this Order would be frivolous and therefore, would not be taken in good faith pursuant to 28 U.S.C. § 1915(a)(3). *See Coppedge v. United States*, 369 U.S. 438, 445 (1962); *Gardner v. Pogue*, 558 F.2d 548, 550 (9th Cir. 1977) (indigent appellant is permitted to proceed IFP on appeal only if appeal would not be frivolous).

The Clerk shall close the file.

IT IS SO ORDERED.

Dated: July 19, 2011


MARILYN L. HUFF, District Judge
UNITED STATES DISTRICT COURT